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## HOPEWELL HEIGHTS DEVELOPMENT CO., Inc. v. KAGAY-MARSHALL REALTY CO.

March 18, 1920.

[102 S. E. 582.]

**Brokers (§ 75\*)—Contract Held to Require Payment of Commission on Excess Selling Price before Full Collection.**—Under a real estate brokerage contract giving the broker a commission of 20 per cent. on the list prices and one-half of the average on the prices obtained above the list price, said commissions to be paid from three-fourths of the collections received on sales, the provision for payment of commissions applies to the half of the excess as well as the percentage of the list price, broker is entitled to his full compensation when three-fourths of the collections are sufficient to pay them, though the collections to that time are not equal to the list price.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638.]

Error to Circuit, Court of City of Petersburg.

Action by the Kagay-Marshall Realty Company against the Hopewell Heights Development Company, Incorporated. Judgment for plaintiff, and defendant brings error. Affirmed.

*Plummer & Bohannon*, of Petersburg, for plaintiff in error.

*Charles Hall Davis*, of Petersburg, and *Mann & Tyler*, of Norfolk, for defendant in error.

## STANDARD ACCIDENT INS. CO. v. WALKER.

March 18, 1920.

[102 S. E. 585.]

**1. Insurance (§ 455\*)—Accident Insurer Liable for Death from Homicide; "Accidental Killing by Violence."**—A homicide resulting from bad feeling is an "accidental killing by violence," for which an accident insurer is liable, in the absence of any provision in its policy relieving it from liability.

**2. Appeal and Error (§ 173 (14)\*)—Defense That Beneficiary Had Guilty Knowledge of Intent to Kill Insured Raised Too Late on Error.**—In an action on an accident policy on the life of one who was killed by his son, the contention that his wife, the beneficiary, had guilty previous knowledge of her son's intention to murder his father, was raised too late, when not suggested in the trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 557.]

**3. Insurance (§ 665 (3)\*)—Evidence Held Not to Show Beneficiary's Participation in Murder of Insured.**—Evidence that insured's

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

son, after shooting him, went downstairs and said to his mother that he had "got him," or "shot him," and that she replied, "I told you not to do that," would have been insufficient to show guilty knowledge or participation on her part, preventing recovery on the policy.

**4. Insurance (§ 146 (3)\*)—Conditions Intended to Cause Forfeiture Are Construed against Insurer.**—As insurance contracts are prepared by the insurer, conditions therein intended to cause a forfeiture are construed most strongly against the company.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 796, 797.]

**5. Insurance (§ 296\*)—Representation That Applicant's Duties Were Those of Supervision Only Not False.**—Though a contractor, whose chief duty was to supervise the work of his servants in brick construction, sometimes would take the trowel and lay bricks to show them how the work was to be done, a representation by him, in applying for insurance, that his duties were those of "proprietor—supervising only" was not a false representation, avoiding the policy or reducing the insurance.

**6. Insurance (§ 301\*)—Failure to Disclose Weekly Benefits in Other Orders Held Not Material.**—The failure of an applicant for accident insurance to disclose, in response to an inquiry concerning other insurance, his membership in a social club which provided a weekly sick benefit of \$4, and to report a policy providing a weekly benefit of \$5 subsequently taken out by his wife, was not material, within Code 1904, § 3344a, as modified by Code 1919, § 4220, so far as the insurance against death was concerned, and hence did not avoid the policy, when not due to a willful purpose to deceive or defraud.

Error to Law and Equity Court of City of Richmond.

Action by Maggie L. Walker against the Standard Accident Insurance Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*L. O. Wendenburg*, of Richmond, for plaintiff in error.

*Smith & Gordon* and *J. T. Hewin*, all of Richmond, for defendant in error.

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NORFOLK SOUTHERN R. CO. *v.* FENTRESS et al.

March 18, 1920.

[102 S. E. 588.]

**1. Evidence (§ 113 (8)\*)—Cost Admissible as a Circumstance on Question of Market Value.**—In fire damage cases evidence of the

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\*For other cases see same topic and KEY-NUMBER in all Key Numbered Digests and Indexes.